

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
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Investigation 95-04-044
(Filed April 26, 1995)

**ZAYO GROUP LLC'S (U-6102-C) PETITION FOR MODIFICATION OF
DECISION 98-12-083**

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October 1, 2020

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DECISION 98-12-083**

I. INTRODUCTION

Pursuant to California Public Utilities Commission (Commission) Rule of Practice and Procedure 16.4, Zayo Group, LLC (Zayo) submits this Petition for Modification (PFM) to Decision (D.) 98-12-083 (as corrected by D.99-02-004¹). D.98-12-083 granted Certificates of Public Convenience and Necessity (CPCNs) to 12 petitioners, including Zayo's predecessor in interest, authorizing the petitioners to operate as Facilities-based Competitive Local Exchange Carriers (CLCs), to offer resold local exchange services, and/or interLocal Access and Transportation Areas (interLATA) and intraLATA interexchange services. The CPCNs' grant of facilities-based authority allows for the construction of new fiber optic cable in existing utility rights-of-way.

¹ D.99-02-044 corrected certain errors appearing in Appendix B of the order, which sets forth the summary of CLC petitioners and authority granted to each.

Before granting the CPCN, the Commission conducted environmental review pursuant to the California Environmental Quality Act (CEQA), and adopted a Mitigated Negative Declaration (MND) that included a number of mitigation measures that the CLC must comply with to qualify for the construction authorization under the CPCN. The MND found that so long as a proposed project satisfied those terms, i.e., remained within the utility right-of-way and satisfied the mitigation measures, there would be no significant environmental impacts and no further approval from the Commission required.

However, the MND, which is incorporated into the CPCN, provides that if a proposed project goes outside the existing utility right-of-way into other rights-of-way, such as roadways, the CPCN holder must file a petition to modify the CPCN that is route specific for the proposed project. In practice, parties have also filed applications for modification of their CPCNs.² Regardless of whether by petition or application, however, the filing calls for a discretionary decision on the Commission's part and, pursuant to the MND, an environmental review conducted by the Commission as the lead agency under CEQA.

While this aspect of the CPCN provides guidance on how future environmental review is to be conducted for fiber optic lines that stray outside utility right-of-ways, it also has had the unintended consequence of discouraging other state agencies which are otherwise authorized – and, as discussed below, better situated – to conduct the environmental review from doing so. For the reasons detailed below, it also imposes an unnecessary demand on the Commission's already overburdened docket with proceedings that could just as well be addressed by a ministerial advice

² See e.g., *In Re Modification of Level 3 Communications* (Aug. 3, 2000) 2000 WL 1752315, A.99-06-028, D.00-08-016 (approving modification to Level 3 Communications' CPCN to authorize construction of fiber optics cable outside of the utility ROW). As discussed below, Zayo is filing concurrently with this petition for modification an application for modification of its CPCN that is modelled after the *Level 3 Communications* matter. See Application of Zayo Group LLC (U-6102-C) for Modification of Its Existing Certificate of Public Convenience and Necessity (filed October 1, 2020).

filing. In particular, where a fiber optic line deviates from a utility-right-of-way into a roadway and there is another public agency with jurisdiction over the project, there is no reason why the Commission needs to consider the route of the line or retain the lead agency role over the project. In such situations, if the other public agency has the requisite authority to ensure compliance with CEQA, it should exercise it.

Zayo submits this PFM to modify D.98-12-083 to alter specific language in this two decade old decision to avoid the Commission from having to engage on issues that are equally or better dealt with by a sister state agency or other public agency. As detailed below, this seemingly arcane issue is born of real world experience. Concurrent with this PFM, Zayo files an application for modification of Zayo's CPCN in order to move forward with the possible development of a fiber optic line in the northeastern corner of the State. *See* Application of Zayo Group LLC (U-6102-C) for Modification of its Existing Certificate of Public Convenience and Necessity. That application is necessary because of the current problematic language in Zayo's CPCN.

By filing the instant PFM, Zayo hopes to avoid having to make similar costly and time-consuming filings in the future. Zayo believes that such filings are not a useful expenditure of time and resources by Zayo or the Commission. If granted, Zayo believes the Commission will be able to reduce the demands on its resources and expedite the permitting of much needed broadband infrastructure. Zayo has endeavored to narrowly tailor the scope of its PFM so that other agencies can carry out the environmental review and approval of projects that are within their expertise to approve without reducing the Commission's responsibilities. Where no other public agency has authority to review the potential impacts of proposed projects outside the utility right-of-way, responsibility would remain with the Commission.

II. PROCEDURAL HISTORY AND BACKGROUND

In an effort to promote competition in the telecommunications markets, in 1995 the Commission adopted interim rules authorizing prospective CLCs to request CPCNs to provide local exchange service in the service territories of Pacific Bell and GTE California, Inc.³ The Commission also established the certification process that would allow prospective CLCs to file requests for CPCN authority. Specifically, the Commission directed CPCN candidates to file petitions for operating authority in the docket for Order Instituting Investigation (I.) 95-04-044.⁴

On September 28, 1998, Zayo's predecessor, Highspeed.com of California LLC, later known as NTI of California, LLC (NTI), filed Petition #123, requesting a CPCN to provide interLATA and intraLATA interexchange services and competitive local exchange services as a facilities-based carrier and reseller. Commission decision 98-12-083 approved Petition #123, along with the CPCN petitions of eleven other applicants, and granted Highspeed.com the requested authority.⁵ Among the rights granted by way of the CPCN was the right to install fiber optic cable, subject to certain limitations, within utility rights-of-way without need for further Commission approval. For ease of reference, a copy of D.98-12-083, as reported by LexisNexis at 1998 Cal. PUC LEXIS 1010; 84 CPUC2d 468, is attached as **Attachment A**.

In approving the CPCNs, the Commission satisfied the requirements of CEQA through the certification of the MND, referred to as "Negative Declaration 12." (See D.98-12-083, Appendix D, starting at *49 of Attachment A).⁶ Among the MND's findings is that there be no impacts to

³ *In Re Competition for Local Exch. Serv.* (July 24, 1995) 60 CPUC 2d 611 (D.95-07-054).

⁴ *Id.*, Ordering Para. 2.

⁵ Zayo later secured Highspeed.com's CPCN after merging with and acquiring NTI. (See D.08-08-013 [decision approving the joint unopposed application of NTI and Zayo for transfer of control of NTI to Zayo].) Zayo currently operates in California as a facilities-based CLC.

⁶ In December 1995, Commission Decision D.95-12-057 adopted a final MND finding that the proposed projects of the initial 40 facilities-based petitioners would not have potentially significant environmental effects with specified mitigation measures incorporated by the projects. Following the adoption of D.95-

wetland habitat and that the route avoid all known cultural resources. In addition, the MND requires that “if a proposed project extends beyond the utility right-of-way into undisturbed areas or other right-of-way [*such as roads*], the petitioner shall file a Petition to Modify its Certificate for Public Convenience and Necessity (CPCN).” (See D.98-12-083, Appendix D, Mitigation Measure A at *60 and compare to “Project Description” section identifying “other right-of-way” to include roads, Attachment A at *55). The MND specifies that, in such an event, the Commission would serve as the lead agency for conducting the necessary additional environmental review.⁷

The problem with this structure and the need for this PFM came sharply into view based on Zayo’s recent interactions with the California Department of Transportation (Caltrans) in the permitting of a major fiber optic line from Oregon, through California to Nevada. This 640 mile line is to run from the town of Umatilla Oregon, on the Oregon/Washington border, to Prineville, in Central Oregon, to the California border and then through California to Reno, Nevada. Much of the line in Oregon and Nevada, referred to as the UPR line for the initials of the three major towns along its route, has been built. However, no construction has taken place on the 193 mile length traversing the northeastern corner of California.

Once built, the UPR line will provide a conduit through which local internet providers may be able to run their own lines to provide local service to the many small towns along the proposed route including in and around the towns of Alturas, Termo, Janesville, Milford, and Omira. With

12-057, the Commission received eight additional petitions for facilities-based services. Following the public comment period, the Commission made minor modifications to the first MND and, in September 1996, adopted the second Negative Declaration for these eight companies (“Negative Declaration II”; see, D.96-09-072). Thereafter, the Commission approved nine additional Negative Declarations in granting CPCN authority to nine groups of applicants, to provide facilities based local telecommunication services under essentially the same circumstances. Negative Declaration 12 represented the twelfth negative declaration approved in conjunction with the grant of CPCN authority to Highspeed.com, along with 11 other applicants.

⁷ *Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, 1998 Cal. PUC LEXIS 1010 *98; 84 CPUC2d 468 (D.98-12-083).

construction of the Project, critically underserved areas of California will have the infrastructure necessary to provide internet service.

There is nothing particularly exotic about the Project. Like almost all fiber optic line projects developed under the CPCN's authorization, the line would be buried in the shoulder of a road, here, US Route 395, which Caltrans operates and maintains. All along the road, various utilities have been installed, including gas, water, overhead power and telephone. Indeed, portions of Route 395's shoulder already have a fiber optic line buried in it. As a result, much of the line will lie within or be immediately proximate to existing utility rights-of-way.⁸ Based on conversations with Commission staff, Zayo believed that the proposed route met the conditions included in the CPCN and that it could be relied upon to obviate the need for any further action at the Commission. Zayo further understood that if any additional environmental review was necessary, Caltrans would serve as the CEQA lead agency in connection with issuance of the encroachment permit Caltrans must issue for the UPR project to move forward.

Caltrans, however, declined to take on the role of the lead agency based on the language in the MND requiring a petition to modify Zayo's CPCN for projects that might go beyond the utility right-of-way and that the Commission serve as the CEQA lead agency for approving the modified route. In its view, this language stripped Caltrans and any other public agency of the authority to issue any discretionary approvals over the projects unless and until the Commission completed the environmental analysis and issued the modification.

Believing that CEQA supported its arguments, Zayo filed a petition with the Governor's Office of Policy and Research (OPR). Pursuant to California Public Resources Code section 21165 and California Code of Regulations, section 16014, Zayo requested that OPR designate Caltrans

⁸ The proposed alignment showing the route in California is depicted in **Attachment B**.

as the lead agency for the project. (See **Attachment C**). Zayo argued that to the extent the Project required any further environmental review, Caltrans was best positioned to act as the lead agency. The California segment of the Project traverses 193 miles that generally follow the US-395 corridor, the vast majority of which will fall within the right-of-way owned by Caltrans. Indeed, as Zayo described to OPR, approximately 184 out of the 193 miles (95%) of the alignment will fall within the Caltrans right-of-way and would require an encroachment permit from Caltrans.⁹

The CPUC staff largely agreed with Zayo’s view that the Commission did not have a useful role to play in the approval process. In the words of Robert Osborn, Director of the Communications Division, written in a letter to OPR on April 15, 2020, “we are unclear how the CPUC acting as lead agency would be helpful in this instance” and that “there are no substantive issues for the Commission to determine—only CEQA compliance.” (**Attachment D**).

Ultimately, OPR declined to act on Zayo’s request that Caltrans be designated as lead agency, noting that an “official lead agency determination would be premature.” (See **Attachment E**). While acknowledging the possibility that either the Caltrans or the Commission “could be the lead agency for the project,” OPR determined that the “crux of the debate is whether the Applicant will need to amend its [CPCN].” (*Id.*).

Faced with mounting delays, Zayo decided to move forward with filing an application with the Commission to modify its CPCN, which it is doing concurrently with the filing of this PFM. In so doing, has tacitly agreed to a lengthy delay in commencing the UPR project because of the lengthy time required for the Commission to process an application (at least a full year). This

⁹ In addition to virtually all of the Project being within the existing Caltrans rights-of-way, two-thirds of it will also be between the edge of the highway and an existing utility where the ground has previously been disturbed—not only by construction of the road itself, but also by the subsequent installation of one or more utility lines.

delay comes at a bad time, given the impact the delay will have on the project, including increased costs, the deferral of the significant economic benefits as well as the ability to improve internet services to chronically underserved areas.

Against this backdrop, Zayo files this PFM to seek changes to D.98-12-083 to avoid this situation from arising again. Zayo operates approximately 9,122 route miles of high speed fiber optic line in California. Zayo hopes to make additional investments in broadband infrastructure in the State. As proposed below, if a proposed project goes outside of a utility right-of-way, so long as another public agency has discretionary permitting authority over the bulk of the project, that agency should act as the CEQA lead agency in the issuance of the permit and there ought not be need for further action by the Commission. Approval of this PFM will lighten the Commission's load and allow the more efficient approval of such projects in the future.

III. LEGAL STANDARD

A party may file a PFM to request that the CPUC make changes to an issued decision. Under Rule 16.4(b), PFMs must "concisely state the justification for the requested relief." In Section IV, Zayo describes the need for the requested relief. Rule 16.4(b) further provides that a PFM "must provide specific wording to carry out all requested modifications to the decision." In Section V, Zayo proposes changes to the relevant sections of D.98-12-083 and the MND adopted therein.

Rule 16.4(d) requires an explanation of timing for any PFM filing that is more than one year from the effective date of the Commission's decision. While Zayo is filing this PFM more than one year since the issuance of D.98-12-083, the unique set of circumstances giving rise to the issue here could not have been reasonably anticipated nor fully appreciated within one-year of the decision.

IV. JUSTIFICATION FOR REQUESTED RELIEF

The current requirement that the Commission must amend its CPCN and that it must act as lead agency on the MND any time a fiber optic line project runs outside an existing utility right-of-way should be deleted. It is an inefficient use of resources without any concomitant benefit to the environment, public interest or utility services. It requires the Commission to expend valuable resources reviewing issues and resolving matters that do not lie within its core competencies or mission when there are other public agencies in whose core competency the matter lies.

It is also needlessly time consuming for both the Commission and the applicant. The Commission's process for handling a CPCN application – even if it is just an amendment to an existing CPCN – from the filing of the application to Commission decision requires a year or more—and that is without consideration of the pre-filing requirements which adds several additional months of time prior to the application's filing.¹⁰ With an enormously busy docket and many issues of critical statewide importance before it, the Commission should not need to devote its limited administrative resources toward the issuance of amended CPCNs every time a party like Zayo seeks to place a new fiber optic line in a roadway shoulder.

Nothing in the logic and reasoning of Commission's original CPCN warrants that it need do so – except, of course, the language that Zayo urges the Commission delete from its decision. The original concept implicit in the CPCN is that utility rights-of-way have already been disturbed so they are unlikely to suffer adverse environmental impacts from the installation of an additional utility asset, *e.g.*, a fiber optic cable. Thus, it authorizes such construction without further

¹⁰ The Commission's CEQA Pre-filing Guidelines Environmental Assessment (PEA) Checklist contemplate that CPCN applicants must prepare a PEA, which should be filed in draft form prior to formal filing with the application. Available at: <https://www.cpuc.ca.gov/ceqa/>. With regard to the UPR line, Zayo provided Commission staff with a draft of the PEA on July 31, 2020. Zayo did not receive comments back until September 24, 2020 (and Zayo filed the application seven days later after incorporating those comments, effectively adding an additional two months to the schedule).

Commission action so long as the project does not go outside of the utility right-of-way¹¹ and does not extend into “undisturbed areas or into other rights-of-way.”¹²

The phrase “other rights-of-way” is where the problem arises because earlier in the MND, it identifies “other rights-of-way” to include roadway rights-of-way. *Id.* at *55. In so doing, the Commission created the implication that *anytime* a fiber optic line is to be buried in a roadway right-of-way, and outside of a utility right-of-way, the CPCN applicant must return to the Commission for a modification of its CPCN. This certainly does not square with the reality that roadway rights-of-way, just like utility rights-of-way, are already areas that have previously been disturbed. No doubt, that is the reason that existing law already effectively authorizes the placement of fiber optic lines in roadways in much the same way as does the CPCN. *See* Cal. Pub. Util. Code § 7901 (authorizing telephone corporations like Zayo to construct facilities “upon any public road or highway, along or across any of the waters or lands within this State” so long as the facilities do not “incommode the public use of the road or highway or interrupt the navigation of the waters”).¹³

Which brings this discussion back to the example afforded by Zayo’s effort to permit the UPR line. Zayo hoped and assumed it would be able to use its CPCN coupled with other existing

¹¹ The Commission has noted there has been some “uncertainty as the precise meaning of the term ‘right-of-way.’” R.06-10-006 (Oct. 5, 2006), p. 10, n.22. This uncertainty persists today. As described in the MND supporting Zayo’s CPCN, “utility right-of-way” is defined as “any utility right-of-way, not limited to only telecommunications utility right-of-way.” (MND, 1998 Cal. PUC LEXIS 1010 *60). As detailed below, Zayo believes this term should be expanded to include any public right-of-way, such as roadway rights of way.

¹² *Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, 1998 Cal. PUC LEXIS 1010 *60; 84 CPUC2d 468 (D.98-12-083).

¹³ The phrase “incommode the public use” has been interpreted to mean “to unreasonably subject the public use to inconvenience or discomfort; to unreasonably trouble, annoy, molest, embarrass, inconvenience; to unreasonably hinder, impede, or obstruct the public use.” *T-Mobile West LLC v. City and County of San Francisco* (2016) 3 Cal.App.5th 334, 355, *as modified on denial of reh'g* (Oct. 13, 2016), *aff'd* (2019) 6 Cal.5th 1107.

law to proceed directly to obtaining an encroachment permit from Caltrans, with Caltrans conducting any additional necessary CEQA environmental work. However, Caltrans was not willing to take on this role based on the language in the MND describing the need for an amended CPCN and that the Commission would continue to act in the role of lead agency over such projects going forward (apparently so long as the CPCN is valid).

While the issue is now likely moot as it relates to the UPR line in light of the pending application to modify its CPCN, granting this PFM would avoid a recurrence in the future on other projects Zayo is considering. In Zayo's view, where there is another public agency with authority over the bulk of a project, no benefits are achieved by requiring the filing of a new CPCN application and obliging the Commission to serve as the CEQA lead agency. Ordinarily, there will be another public agency with an obligation to issue a discretionary permit, such as Caltrans' issuance of an encroachment permit on the UPR line. In that circumstance, the Commission should defer to that agency's action and, at most, seek only that the CPCN holder advise it after the fact of the public agency's action, with such notice coming by way of an Tier 1 advice letter.¹⁴ The Commission would only need to be involved if there was no other public agency with substantial permitting responsibility over the proposed project and no CPCN already authorizing the action.

This would not only be consistent with the wise use of limited resources but also with the CEQA guidelines. They provide that where a project is to be carried out by a nongovernmental entity, "the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole."¹⁵ For projects like Zayo's UPR Project, the line will be

¹⁴ This would keep the Commission apprised of any proposed projects and afford Commission staff the opportunity to offer input regarding any potential issues that are germane to the Commission's regulatory function.

¹⁵ Cal. Code Regs., tit. 14, § 15051.

located almost entirely within Caltrans right-of-way. The encroachment permit Caltrans must issue gives Caltrans plenary control over the specific route as well as all the other factors that implicate potential environmental impacts, such as the method and timing of construction. While the Commission may have the authority and capability to consider the issues involved, as compared to Caltrans, the Commission does not have primary responsibility for approving or carrying out the project.

In acting as the lead agency for the UPR line, the Commission will invariably, and rightly, defer to Caltrans on all the substantive issues related to impacts within Caltrans' right-of-way and rely on Caltrans to oversee the implementation of the necessary mitigation measures. Given that the approved route will ultimately be determined by Caltrans, it is best suited to take the lead agency role. The decades old statement to the contrary in the MND, which is the basis for Caltrans view the Commission must take the lead agency role, should be deleted to avoid this issue from arising again in the future.

Much has changed in the two decades since the Commission issued the CPCN. Then, the Commission was stepping into a complex and still somewhat unsettled regulatory environment that needed the Commission's leadership in order to ensure fiber optic line could be efficiently installed. The CPCN and MND provided a means to streamline the process so that California could open the telecommunications markets to increased competition.

Commission leadership is again needed, this time to ensure that the streamlining objective is not thwarted by the language in the Commission's decision that requires an amendment to the CPCN anytime a line goes outside a utility right-of-way into a roadway right-of-way. The modifications Zayo proposes below will bring the CPCN in line with its original underlying objectives while ensuring the Commission remains engaged in matters that warrant its attention,

all the while without any diminution in the environmental review required by CEQA. In the process, it will reduce the time and expense required for approval.

V. SPECIFIC MODIFICATIONS

Zayo proposes that the Commission modify Negative Declaration 12, as adopted by D.98-12-083, by making the specific changes noted in the table below. Those changes fall into four categories. First, Zayo requests that the Commission delete language in the MND that requires a petition to modify a CPCN whenever a proposed project goes outside of a utility right-of-way and accomplishes this change by expanding the scope of the term utility right-of-way to include any public right-of-way, which would capture roadway rights-of-way.

Second, Zayo proposes specific language that clarifies that if is another public agency has discretionary authority over at least fifty percent of the total length of the project and that public agency approves the proposed project after conducting any environmental review required under CEQA, then no Petition to Modify or application to amend will be required.

Third, in recognition of the Commission's interest in the actions of CLCs, Zayo proposes language that where a CLC relies upon the approval of a public agency in lieu of a petition to modify the CPCN, it must advise the Commission by way of a Tier 1 Advice Letter within 30 days of that approval.

Finally, Zayo proposes to add language to the MND that ensures the CEQA guidelines are given full force and effect by making clear that nothing prevents another public agency from assuming the role of CEQA lead agency for projects over which that agency will have the greatest responsibility.

These specific changes to the language of D.98-12-083 are set forth in the table below:

D.98-12-083

New Finding of Facts

- On October 1, 2020 Zayo filed a Petition for Modification of D.98-12-083, and Negative Declaration 12, the environmental document adopted by the Commission in approving D.98-12-083.

New Conclusions of Law

- The proposed modifications approved by today's decision will not have any environmental effects as it will not authorize any activity with the potential to impact the environment to proceed.
- Pursuant to the provisions of the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15162), no further environmental document is required to make the modifications authorized by this decision.

New Ordering Paragraph

- Zayo's Petition for Modification is granted.
- The modified Negative Declaration 12 attached to this decision is hereby approved and adopted.

Negative Declaration 12

Existing Text	Proposed Modification
<p>P.*60¹⁶ <u>Environmental Determination</u> ***</p> <p>1. The proposed projects could have potentially significant environmental effects for all environmental factors if a proposed project extends beyond the utility right-of-way into undisturbed areas or into other rights-of-way. ("Utility right-of-way" means any utility right-of-way, not limited to only telecommunication utility right-of-way.) For the most part, the petitioners do not plan to conduct projects that are beyond the utility right-of-way. However, should this occur, the petitioner shall file a Petition to Modify its Certificate for Public Convenience and Necessity (CPCN). An appropriate environmental</p>	<p><u>Environmental Determination</u> ***</p> <p>1. The proposed projects could have potentially significant environmental effects for all environmental factors if a proposed project extends beyond the utility right-of-way into undisturbed areas or into other rights-of-way. ("Utility right-of-way" means any utility right-of-way, not limited to only telecommunication utility right-of-way, <i>but including all public rights-of-way</i>.) For the most part, the petitioners do not plan to conduct projects that are beyond the utility right-of-way. However, should this occur, the petitioner shall file a Petition to Modify its Certificate for Public Convenience and Necessity (CPCN), <i>which will be granted or denied</i></p>

¹⁶ Pages reference citations are to Attachment A, the version of D.98-12-083 reported by LexisNexis at: 1998 Cal. PUC LEXIS 1010; 84 CPUC2d 468 (D.98-12-083).

analysis of the impacts of these site specific activities shall be done.

following necessary review under CEQA. If another public agency has discretionary authority over at least fifty percent of the total length of the Project and that public agency approves the Project after conducting any environmental review required under CEQA, then no Petition to Modify will be required provided that the project proponent advise the Commission by way of a Tier 1 Advice Letter within 30 days of such approval. ~~An appropriate environmental analysis of the impacts of these site specific activities shall be done.~~

P.*60 **A) All Environmental Factors:** if a proposed project extends beyond the utility right-of-way into undisturbed areas or other right-of-way, the petitioner shall file a Petition to Modify its Certificate for Public Convenience and Necessity (CPCN). (“Utility right-of-way” means any utility right-of-way, not limited to only telecommunications utility right-of-way.) An appropriate environmental analysis of the impacts of these site specific activities shall be done.

A) All Environmental Factors: if a proposed project extends beyond the utility right-of-way into undisturbed areas ~~or other right-of-way~~, the petitioner shall file a Petition to Modify its Certificate for Public Convenience and Necessity (CPCN), *which will be granted or denied following necessary review under CEQA. If another public agency has discretionary authority over at least fifty percent of the total length of the Project and that public agency approves the Project after conducting any environmental review required under CEQA, then no Petition to Modify will be required provided that the project proponent advise the Commission by way of a Tier 1 Advice Letter within 30 days of such approval.* (“Utility right-of-way” means any utility right-of-way, not limited to only telecommunications utility right-of-way.) ~~An appropriate environmental analysis of the impacts of these site specific activities shall be done.~~

Negative Declaration 12, Appendix C

	Existing Text	Proposed Modification
P.*94	Roles and Responsibilities: As the lead agency under the California Environmental Quality Act (CEQA), the Commission is required to monitor this	Roles and Responsibilities: As the lead agency under the California Environmental Quality Act (CEQA), the Commission is required to monitor this

project to ensure that the required mitigation measures are implemented. The Commission will be responsible for ensuring full compliance with the provisions of this monitoring program and has primary responsibility for implementation of the monitoring program. The purpose of this monitoring program is to document that the mitigation measures required by the Commission are implemented and that mitigated environmental impacts are reduced to insignificance or avoided outright.

project to ensure that the required mitigation measures are implemented. The Commission will be responsible for ensuring full compliance with the provisions of this monitoring program and has primary responsibility for implementation of the monitoring program. The purpose of this monitoring program is to document that the mitigation measures required by the Commission are implemented and that mitigated environmental impacts are reduced to insignificance or avoided outright. *Nothing in the foregoing shall be interpreted as limiting the right or responsibility of another public agency from assuming the role of CEQA lead agency for projects over which that agency will have the greatest responsibility.*

P.*98 Mitigation Monitoring Program:

If any project is expected to go beyond the existing utility rights-of-way, that project will require a separate petition to modify the CPCN. The petitioner shall file the petition with the Commission and shall also inform the affected local agencies in writing. The local agencies are also responsible for informing the Commission of any project listed in the quarterly reports which may potentially go out of the existing utility right-of-way. As discussed in Mitigation Measure A, a complete environmental review of the project will be triggered under CEQA, with the Commission as the lead agency.

Mitigation Monitoring Program:

If any project is expected to go beyond the existing utility rights-of-way, that project will require ~~a separate petition to modify the CPCN~~ *additional review and approval*. The petitioner shall file ~~the petition with the Commission and shall also inform the affected local agencies in writing~~ *a Petition with the Commission and to Modify its CPCN which will be granted or denied following necessary review under CEQA. If another public agency has discretionary authority over at least fifty percent of the total length of the Project and that public agency approves the Project after conducting any environmental review required under CEQA, then no Petition to Modify will be required provided that the project proponent advise the Commission by way of a Tier 1 Advice Letter within 30 days of such approval*. The local agencies are also responsible for informing the Commission of any project listed in the quarterly reports which may potentially

go out of the existing utility right-of-way.
~~As discussed in Mitigation Measure A, a
complete environmental review of the
project will be triggered under CEQA,
with the Commission as the lead agency.~~

VI. CONCLUSION

Zayo respectfully requests that the Commission expeditiously grant this PFM to modify Negative Declaration 12, as adopted by D.98-12-083, in accordance with the above modifications.

Respectfully submitted,

By: /s/ William D. Kissinger
William D. Kissinger

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